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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6167 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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BALDEVBHAI CHHAGANBHAI MAKWANA

Versus

COMMISSIONER OF POLICE

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Appearance:

MR MUKESH D RAVAL for Petitioner

MR MD RAVAL, AGP for respondent-State.

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CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 09/08/2000

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 ( hereinafter referred to as " the Act of 1985" ) by the order dated 9-5-2000 passed by the Police Commissioner, Ahmedabad City, and he has been

declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. Learned counsel for the petitioner has restricted his arguments only on the point that there is delay in deciding the representation. As per the argument of learned counsel for the petitioner, the petitioner sent his representation on 31-5-2000 and same has been received by the authority on 3-6-2000, but till date the same has not been decided by the authority and communicated to the petitioner. So, there is delay in deciding the representation for which learned counsel for the petitioner has relied upon a decision reported in A.I.R. 1999 SC 684 Rajanmal v. State of Tamil Nadu A.I.R. 1999 SC 684 Rajanmal v. State of Tamil Nadu and another wherein it is held as under.

" It is a constitutional mandate commanding the concerned authority to whom the detenu submits his representation to consider representation and dispose of the same as expeditiously as possible. The words " as soon as may be " occurring in Clause (5) of Article 22 reflects the concern of the Framers that the representation should be expeditiously considered and dispose of with a sense of urgency without an avoidable delay. However, there can be no hard and fast rule in this regard. It depends upon the facts and circumstances of each case. There is no period prescribed either under the Constitution or under the concerned detention law, within which the representation should be dealt with. The requirement however, is that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of constitutional imperative and it would render the continued detention impermissible and illegal."

4. In view of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 9-5-2000 passed against the detenu is hereby quashed. The petitioner-detenu Baldevbhai Chhaganbhai Makwana is hereby ordered to be set at liberty forthwith, if not required to be detained in any other case. Rule is made

absolute accordingly with no order as to costs.

( R.P.Dholakia, J.)

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